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No. 07-1017

FILED
MAR 3 - 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the Supreme Court of the United States

CASTLE ROCK ESTATES, LLC,
Petitioner,

v.

THE STATE OF NEW JERSEY, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, THE TOWNSHIP OF WEST MILFORD, THE GOVERNING BODY OF THE TOWNSHIP OF WEST MILFORD, THE PLANNING BOARD OF THE TOWNSHIP OF WEST MILFORD, AND JOHN DOES I THROUGH V, PERSONS AND/OR ENTITIES WHO COOPERATED AND/OR PARTICIPATED IN THE WRONGS ALLEGED HEREIN BUT ARE AS YET UNIDENTIFIED.

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

COUNTERSTATEMENT OF THE CASE

Petitioner asks this court to review the New Jersey Supreme Court's decision (Pa1)[1] denying a petition to review an appellate court decision rejecting a due process challenge to a penalty provision of the New Jersey Water Protection and Planning Act, *N.J. Stat. Ann.* §13:20-1 *et seq.*, also known as the Highlands Act. The provision in question, *N.J. Stat. Ann.* §13:20-35(d), authorizes the Commissioner of the New Jersey Department of Environmental Protection (DEP) to levy a civil administrative penalty upon a person found to have violated the Highlands Act, its implementing regulations, or the terms of a Highlands permit. Petitioner, who has never been the subject of a Highlands enforcement action, alleges that *N.J. Stat. Ann.* §13:20-35(d) violates the due process guarantee of the Fourteenth Amendment and that, therefore, the Court should grant its petition pursuant to 28 *U.S.C.* §1257(a).

The Court should deny the petition because both administrative and judicial review is available to persons against whom a DEP penalty has been assessed. (Pa16). *N.J. Stat. Ann.* §13:20-35(d) provides that DEP shall levy no administrative penalty until

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[1] "Pa" refers to the Appendix to the Petition For Certiorari. "P" refers to the Petition for Certiorari. "Ra" refers to the Appendix to the Brief in Opposition to the Petition ("Respondent's Appendix").

after the party has been notified by certified mail or personal service in writing of (1) the law, regulation or permit violated; (2) the facts alleged to constitute a violation; (3) the amount of the proposed penalty; and (4) that party's right to a hearing. *Ibid.* The statute further specifies that the Commissioner may issue a final order assessing a penalty "after the hearing and upon finding that a violation has occurred." *Ibid.* The Commissioner is also authorized to adjust or "compromise" the fine from that stipulated in the notice based upon the circumstances of the case. *Ibid.* Judicial review of any agency final order, including a final order assessing a penalty, is guaranteed in the New Jersey Constitution and implementing Court rules. (Pa17). *N.J.Const.* art. VI, §5, par.4; *N.J. Court Rule* 2:2-3(a)(2), -4. Since administrative and judicial review of a civil penalty is available, the New Jersey appellate court's decision to dismiss petitioner's due process challenge to *N.J. Stat. Ann.* §13:20-35(d) was correct and the New Jersey Supreme Court's decision not to review that decision implicates no due process right under the Fourteenth Amendment requiring this Court's review pursuant to 28 *U.S.C.* §1257(a).

Petitioner also seeks this Court's review based upon its claim that it was deprived of discovery on fifteen "as applied" claims for relief, claims which petitioner neither describes in its brief nor documents in its appendix. (Pb8). However, DEP documented for the New Jersey courts that these so-called "as applied" claims were contained in the first 250-paragraphs of the Complaint which petitioner called "The Statement Of The Case" and that these claims were addressed in the parties' motions and the courts' decisions. (Ra15 to

Ra19). Since this aspect of the petition is without foundation, the New Jersey Supreme Court's decision declining review implicates no due process right.

The New Jersey Legislature enacted the Highlands Act on August 29, 2004 for the express purpose of preserving the water supply and other natural resources in the New Jersey Highlands from further loss to unplanned, inappropriate development. *N.J. Stat. Ann.* §13:20-2. The Legislature delineated a 415,000 acre Protection Area in *N.J. Stat. Ann.* §13:20-7a, and created in *N.J. Stat. Ann.* §13:20-30 specific protection for the forests, streams and watersheds therein, which DEP was required to apply to proposed development in the Preservation Area until DEP could promulgate comprehensive land use standards protective of the unique Highlands environment. *N.J. Stat. Ann.* §13:20-31a. Thus, as of August 29, 2004, a DEP Highlands permit was required for major development in the Preservation Area. *N.J. Stat. Ann.* §13:20-30a.

DEP promulgated its Highlands permit regulations on May 9, 2005. *N.J. Admin. Code* tit.7, §38; 37 *N.J. Reg. 2050(a).* All other state permit standards that might have previously applied to a proposed project, *e.g.,* the Freshwater Wetlands Program, *N.J. Admin. Code* tit.7, §9B-1 *et seq.*, were incorporated into the Highlands Permit program. *Ibid.* Pursuant to *N.J. Stat. Ann.* §13:20-33b(3), DEP may waive any Highlands permit requirement in order to avoid "taking" property without just compensation. *N.J. Admin. Code* tit.7, §38-6.4. Petitioner, whose property is located in the Preservation Area (Pa7), has

neither applied to DEP for a Highlands permit to develop its property, nor sought a waiver of any Highlands permit requirement. (Pa8).

Not all development requires a Highlands permit. In *N.J. Stat. Ann.* §13:20-28, the Legislature exempted 18 types of activity or development in the Preservation Area from the permitting requirements of the Highlands Act, including construction of one single-family home on any lot in existence as of August 29, 2004. *N.J. Stat. Ann.* §13:20-28a(1). See, also, *N.J. Admin. Code* tit.7, §38-2.3. The Legislature also exempted any development project that had obtained all necessary federal, state and local approvals by March 29, 2004, the date the Act was first introduced into the Legislature. *N.J. Stat. Ann.* §13:20-28a(3); *N.J. Admin. Code* tit.7, §38-2.3(a)3. The practical effect of this provision was to prevent a rush for local development approvals between the time the Act was introduced in the Legislature on March 29, 2004 and the time it was adopted on August 29, 2004. Since Petitioner did not receive its subdivision approval until May, 2004, petitioner's project is subject to the permitting requirements of the Highlands Act. (Pa8).

Like other state environmental regulatory programs, the Highlands Act affords DEP enforcement power. *N.J. Stat. Ann.* §13:20-35(a) allows, but does not require, the Commissioner to take a variety of actions in the event the Commissioner finds that a person has violated the Highlands Act, its regulations or the terms of a Highlands permit. The Commissioner may issue an order identifying the violation, compelling compliance with the specified law,

regulation or permit, and advising the person of the right to a hearing pursuant to *N.J. Stat. Ann.* §13:20-35(b), may commence a civil action for injunctive relief, restoration and compensation with all its attendant procedural protections pursuant to *N.J. Stat. Ann.* §13:20-35(c), may assess a civil administrative penalty following written notice and opportunity for a hearing pursuant to *N.J. Stat. Ann.* §13:20-35(d), or may petition the Attorney General to bring a criminal action pursuant to *N.J. Stat. Ann.* §13:20-35(f).

One year after the Act became law, petitioner filed a 328-paragraph complaint in Superior Court, Law Division (Pa10) alleging that the Highlands Act took its property without just compensation, that ten sections of the Act including *N.J.Stat. Ann.* §13:20-35(d) and three DEP Highlands regulations were unconstitutional, and alleging that the Township of West Milford deliberately delayed action on its subdivision application in order to deny it an exemption from the Act. (Ra1 to Ra 9). Defendants were the State of New Jersey DEP, the Planning Board and Governing Body of the Township of West Milford, and various "John Does."

DEP filed three motions to dismiss various portions of the complaint for failure to state a claim pursuant to *N.J. Court Rule* 4:6-2(e). By order dated April 25, 2006 (Ra1), the trial court granted DEP's motion and dismissed petitioner's inverse condemnation claim on grounds of unripeness, dismissed petitioner's regulatory challenges on grounds of improper venue pursuant to *N.J. Court Rule* 2:2-3(a)(2), and dismissed petitioner's equal

protection, due process and conflict of interest challenge to *N.J. Stat. Ann.* §13:20-13h(2) (establishing priority for transfer of development rights), *N.J. Stat. Ann.* §13:20-16 (allowing State development projects to proceed if the sponsoring department of government finds the project necessary for public health, safety and welfare), *N.J. Stat. Ann.* §13:20-17a (authorizing Highlands Council review of local government action), *N.J. Stat. Ann.* §13:20-20 (affording legal counsel to municipalities with Master Plans compliant with the Regional Master Plan), *N.J. Stat. Ann.* §13:20-25 (granting the Highlands Council authority to seek injunctive relief for violations of the Act), *N.J. Stat. Ann.* §13:20-35(c) and (d) (granting NJDEP authority to seek criminal or civil administrative penalties for violations), and *N.J. Stat. Ann.* §13:20-35(e) (permitting DEP to collect previously assessed penalties in a summary proceeding under the "Penalty Enforcement Law of 1999" *N.J. Stat. Ann.* §2A:58A-10). The trial court also denied Petitioner's motion for Summary judgement on those claims.

By order dated May 10, 2006, the trial court dismissed petitioner's claims against the Township concerning its local subdivision application. (Ra4 to Ra6). Finally, by order dated May 31, 2006 (Ra7 to Ra9), the trial court dismissed petitioner's due process and equal protection challenge to *N.J. Stat. Ann.* §13:20-28a(3) (the exemption for developments with approvals in hand by March 29, 2004). The trial court denied Petitioner's motion for summary judgment on this claim as well.

Petitioner filed a Motion For Leave To Appeal select portions of these orders pursuant to *N.J. Court Rule* 2:2-3(b), arguing that the matter was interlocutory in nature since the Court had not adjudicated fifteen "as-applied claims." (Ra11). DEP opposed the motion, arguing that the trial court had adjudicated all issues among the parties, and that each "as applied" claim had been replicated in petitioner's 250-paragraph "Statement of the Case" which had been addressed by the trial court orders described above. (Ra15 to Ra19). Petitioner then filed a standard Notice of Appeal pursuant to *N.J.Court Rule* 2:2-3(a)(1) but did not withdraw its motion. By order dated July 20, 2006 (Ra21), the appellate court denied Petitioner's motion which alleged the matter was interlocutory, the Notice of Appeal was accepted, and the appeal was briefed and argued.

In an unpublished opinion, the appellate court affirmed the trial court order dismissing petitioner's claim that application of the Highlands Act deprived it of property without just compensation (Pa15) substantially for the reasons set forth in *OFP, L.L.C. v. State,* 395 *N.J.Super.* 591 (App.Div.), 930 *A.*2d. 442, certif. granted, 193 *N.J.* 277; 937 *A.*2d 979 (2007). In *OFP*, the court held that a claim of inverse condemnation arising from application of the Highlands Act was unripe because the OFP had not yet applied to DEP for a Highlands permit or a permit waiver, thereby allowing DEP to arrive at "a final, definitive position" as to how the Act applied to OFP's property. 395 *N.J.Super* at 586-587; 930 *A.*2d. at 451 (citing *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City,* 473 *U.S.* 172, 191

(1985)).

The appellate court also cited *OFP* in affirming the trial court order rejecting petitioner's due process and equal protection challenge to *N.J. Stat. Ann.* §13:20-28(a)(3) (exempting projects with permits in hand by March 29, 2004). (Pa15). In *OFP,* the appellate court held that the retroactive application of *N.J. Stat. Ann.* §13:20-28(a)(3) for the period between March and August, 2004 did not violate guarantees of equal protection under either the New Jersey or United States Constitutions because it was a rational means of furthering the legitimate governmental purpose set forth in *N.J. Stat. Ann.* §13:20-2, namely, to confer immediate protection upon Highlands natural resources in "imminent peril" of being "fragmented and consumed" by development. 395 *N.J.Super.* at 592; 930 *A.*2d. at 453-455 (citing *Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 *U.S.* 717, 729 (1984)).

The appellate court also affirmed the dismissal of petitioner's state law claims due to petitioner's failure to timely challenge an action of a municipality pursuant to *N.J. Court Rule* 4:69 and failure to timely file a Notice of Claim pursuant to *N.J. Stat. Ann* §59:1-1 *et seq.* (Ra4 to Ra6) and, furthermore, rejected petitioner's federal civil rights claims against Township "John Does" for violation of unspecified constitutional rights as "patently without merit." (Pa15).

Finally, the appellate court affirmed dismissal of the remainder of petitioner's claims on appeal (Pa16

to Pa17), namely, that the Highlands Act precluded pre-enforcement judicial review of its provisions (Pa11 to Pa13), that petitioner had been deprived of discovery on its "as-applied" claims (Pa13), and that *N.J. Stat. Ann.* §13:20-16 (allowing State development projects to proceed if the sponsoring department of government finds the project necessary for public health, safety and welfare) was "irrational" (Pa14). In particular, the appellate court held that *N.J. Stat. Ann.* §13:20-35(d) provides an opportunity for administrative review of any DEP decision to assess a penalty (Pa16), and that judicial review of any final decision by a state administrative agency is guaranteed by the New Jersey Constitution and implementing Court rules. (Pa17). *N.J. Const.* art. VI, §5, par.4; *N.J. Court Rule* 2:2-3(a)(2), -4.

ARGUMENT

I. CERTIORARI IS NOT WARRANTED BECAUSE AN OPPORTUNITY FOR A HEARING IS AFFORDED PERSONS SERVED WITH NOTICE OF A CIVIL ADMINISTRATIVE PENALTY PURSUANT TO *N.J. STAT. ANN.* §13:20-35(D) AND JUDICIAL REVIEW OF THE COMMISSIONER'S FINAL ORDER ASSESSING A SPECIFIC PENALTY IS ALSO AVAILABLE.

Petitioner claims that *N.J. Stat. Ann.* §13:20-35 does not obligate the DEP Commissioner to afford a hearing to a person found in violation of the Highlands Act (Pb7) and that, therefore, the New Jersey courts erred in concluding that *N.J. Stat. Ann.* §13:20-35 comports with principles of due process. The claim arises from a misreading of *N.J. Stat. Ann.* §13:20-35 and has no merit.

N.J. Stat. Ann. §13:20-35(a) allows but does not require the Commissioner to take a variety of actions in the event the Commissioner finds that a person has violated the Highlands Act, its regulations or the terms of a Highlands permit. Thus, *N.J. Stat. Ann.* §13:20-35(a) stipulates that the Commissioner "may" issue an order requiring compliance pursuant to *N.J. Stat. Ann.* §13:20-35(b), bring a civil action for compliance or restoration pursuant to *N.J. Stat. Ann.* §13:20-35(c), levy a civil administrative penalty pursuant to *N.J. Stat. Ann.* §13:20-35(d), seek a court order collecting a penalty pursuant to *N.J. Stat. Ann.*

§13:20-35(e), or petition the Attorney General to bring a criminal action pursuant to *N.J. Stat. Ann.* §13:20-35(f).

Petitioner argues that *N.J. Stat. Ann.* §13:20-35(b) provides that the Commissioner "may" provide notice to a person of a right to a hearing, but does not require a hearing. This is incorrect. *N.J. Stat. Ann.* §13:20-35(b) actually provides that the Commissioner "may" issue a order requiring compliance or restoration. In other words *N.J. Stat. Ann.* §13:20-35(b) affords the Commissioner the discretion to issue an order compelling compliance with the Act, its rules, a permit or another DEP order. However, if the Commissioner elects to issue an order, the order must:

> specif[y] the provision or provisions of the law, rule, regulation, permit, approval, or authorization of which the person is in violation; (2) cit[e] the action which constituted the violation; (3) requir[e] compliance with the provision or provisions violated; (4) requir[e] the restoration of the area which is the site of the violation; and (5) provid[e] notice to the person of the right to a hearing on the matters contained in the order. [*N.J. Stat. Ann.* §13:20-35(b); bracketed material added for grammatical reasons.]

Thus, *N.J. Stat. Ann.* §13:20-35(b) affords a person against whom an order is issued notice of the case against him and a meaningful opportunity to meet it. This is the "essence of due process." Mathews v. Eldridge, 424 *U.S.* 319, 349-350 (1976).

Likewise, the Commissioner is authorized, but not required, to assess a civil administrative penalty pursuant to *N.J. Stat. Ann.* §13:20-35(d), for a violation of the Highlands Act, its regulations or a Highlands permit. However, "[n]o assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service." *Ibid.* Furthermore, the notice shall:

> identify the section of the law, rule, regulation, permit, approval, or authorization violated; (2) recite the facts alleged to constitute a violation; (3) state the amount of the civil penalties to be imposed; and (4) affirm the rights of the alleged violator to a hearing. [*N.J. Stat. Ann.* §13:20-35(d)]

The ordered party has 20 days from receipt of the notice within which to deliver to the Commissioner a written request for a hearing. *Ibid.* After the hearing and upon finding that a violation has occurred, the Commissioner may issue a final order after assessing the amount of the fine specified in the notice. *Ibid.* The Commissioner may also adjust or "compromise" the amount of the penalty. *Ibid.* If no hearing is requested, the notice becomes a final order after the expiration of the 20-day period. *Ibid.* DEP regulations at *N.J. Admin. Code* tit.7, §38-1.5(b) state that persons contesting civil orders or notice of civil administrative penalty assessments may request hearings. The filing requirements and procedures for such hearings are set forth in *N.J. Admin. Code* tit.7, §38-13.13. All such hearings are conducted in accordance with the New

Jersey Administrative Procedure Act, *N.J. Stat. Ann.* §52:14B-1 *et seq.* and the Uniform Administrative Procedure rules, *N.J. Admin. Code* tit.1, §1. See, *N.J. Admin. Code* tit.7, §38-13.13(e), which require plenary hearing procedures.

Judicial review of any final decision by a state administrative agency, whether by order or civil penalty assessment, is guaranteed by the New Jersey Constitution and implementing Court rules. (Pa17).*N.J. Const.* art. VI, §5, par.4; *N.J. Court Rule* 2:2-3(a)(2), -4. Since administrative and judicial review of the penalty is available, the New Jersey appellate court's decision to dismiss petitioner's due process challenge to *N.J. Stat. Ann.* §13:20-35(d) was correct and the New Jersey Supreme Court's decision declining to review that decision implicates no due process right under the Fourteenth Amendment requiring this Court's review pursuant to 28 *U.S.C.* §1257(a).

Petitioner alleges, but does not explain, why the hearing procedures in *N.J. Stat. Ann.* §13:20-35(d) compromise or contradict the holding in *Thunder Basin Coal Co., v. Reich*, 510 *U.S.* 200 (1994). (Pb7). No aspect of *N.J. Stat. Ann.* §13:20-35(d) is implicated in the case. Thunder Basin, a mine operator, sued in district court challenging the Mine Safety and Health Administration's instruction that it post the names of the two representatives its employees had chosen pursuant to the Mine Act to participate in mine inspections, obtain certain health and safety information and promote health and safety enforcement. The mine operator's objection was that

the designated representatives were not its employees, but were employed by the union. Although there was a statutory procedure for administrative review of a citation for violation of such an order, the mine operator challenged the Administration's interpretation of the Mine Act as permitting such designations by seeking a pre-enforcement injunction from the district court.

A unanimous Supreme Court held that the district court lacked jurisdiction over Thunder Basin's pre-enforcement challenge based upon the Mine Act's language and its legislative history. *Id.* at 216. The court held that factual disputes could be heard by an administrative law judge while legal challenges to the Act's interpretation could be brought before the Federal Mine Safety and Health Review Commission whose decision could be challenged in the appropriate court of appeals. *Ibid.*

Unlike Thunder Basin, petitioner Castle Rock raises no as-applied challenge to *N.J. Stat. Ann.* §13:20-35(d) requiring the court to decide whether an administrative or judicial forum is better suited for its disposition. Indeed, Castle Rock can make no as-applied claim because it has never been the subject of an enforcement action pursuant to the Highlands Act. As explained above, Castle Rock's case is a facial due process challenge to *N.J. Stat. Ann.* §13:20-35(d) which rests solely upon a misreading of the statute's provisions. Since *N.J. Stat. Ann.* §13:20-35(d) provides an opportunity for an administrative hearing upon receipt of a notice of assessment to contest the underlying facts as well as the amount of the penalty,

and judicial review of a final order of penalty assessment is also available, the New Jersey Supreme Court acted in accordance with federal and state due process principles by declining to review the state appellate court decision dismissing petitioner's due process challenge to *N.J. Stat. Ann.* §13:20-35(d).

This Court has previously reviewed a civil penalty assessment mechanism virtually identical to *N.J. Stat. Ann.* §13:20-35(d) and found it unremarkable. In *Kleppe v. Delta Mining Inc.*, 423 *U.S.* 403 (1976), assessment officers sent proposed civil penalty assessment orders to certain mine operators, based on the operators' violations of the Federal Coal Mine Health and Safety Act of 1969 (30 *U.S.C.* §8.01 *et seq.*). The operators protested the amount of the proposed assessments, but since they did not request a formal administrative hearing, the proposed orders became the final assessment orders of the Secretary of the Interior pursuant to 30 *U.S.C.* §819(a)(3). *Id.* at 406. When the operators failed to pay the assessments, the Secretary instituted proceedings against them in the United States District Court for the Western District of Pennsylvania, seeking enforcement of the assessments.

The District Court entered judgments in favor of the mine operators, holding that the assessments were fatally defective for the Secretary's failure to support the assessment orders with fact findings. This Court reversed and remanded for calculation of penalty, holding that under a companion case, *National Coal Operators' Assn. v Kleppe,* 423 *U.S.* 388 (1976), the rules did not compel the Secretary to support his final

assessment orders with express fact findings as to the violation and the amount of the penalty unless the mine operator requested an administrative hearing.

N.J. Stat. Ann. §13:20-35(d) provides the same notice of penalty assessment that this Court found unremarkable in *Kleppe*. Since *N.J. Stat. Ann.* §13:20-35(d) affords an opportunity for a hearing upon receipt of the proposed penalty and allows judicial challenge of a final order, there is no foundation for petitioner's claim that *N.J. Stat. Ann.* §13:20-35(d) violates the due process guarantees of the Fourteenth Amendment, and the petition should be denied.

II. CERTIORARI IS NOT WARRANTED BECAUSE NEW JERSEY COURTS HAVE DISPOSED OF ALL ISSUES AMONG THE PARTIES, INCLUDING THE CLAIMS WHICH PETITIONER CHARACTERIZES AS "AS APPLIED" CLAIMS.

Petitioner seeks this Court's review based upon its claim that it was deprived of discovery on fifteen "as applied" claims for relief, claims which petitioner neither describes in its brief or documents in its appendix. (Pb8). As noted earlier, petitioner's "as-applied" claims are illusory since it has not submitted an application for a Highlands Permit or been the subject of an enforcement action. However, DEP documented for the New Jersey courts that the claims which petitioner identified as "as applied" claims were contained in the first 250-paragraphs of the Complaint which petitioner called "The Statement Of The Case" and that these claims were addressed in the parties' motions and the courts' decisions. (Ra15 to Ra19).[2]

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[2] Petitioner alleges that the following are "as-applied" claims: that the Highlands Act is an abuse of Legislative discretion; that the Act is not rationally related to its desired ends; that the Act is arbitrary and unreasonable; that the Act is not rationally related to a legitimate State interest; that the Act deprives petitioner of its property without due process of law in violation of the state and federal constitutions; that the Act deprives petitioner of its property in violation of the equal protection guarantees of the state and federal constitutions; that the Act is unlawful *ex post facto* legislation that violates the state and federal constitutions; that Defendants have failed to "turn square corners" with petitioner; and that various "john does" have violated Petitioner's constitutional rights. (Ra15 to Ra19).

Since this aspect of the petition is without foundation, the New Jersey Supreme Court's decision declining review of the appellate court decision dismissing petitioner's claims implicates no due process right.

CONCLUSION

For the foregoing reasons, the Petition for a writ of *Certiorari* should be denied.

Respectfully submitted,

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Dated: March 4, 2008

APPENDIX

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By: Barbara L. Conklin, D.A.G.
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - PASSAIC COUNTY
DOCKET NO. PAS-L-003218-0S

CASTLE ROCK ESTATES, LLC,

Plaintiff,

v.

THE STATE OF NEW JERSEY, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, THE TOWNSHIP OF WEST MILFORD, THE GOVERNING BODY OF THE TOWNSHIP OF WEST MILFORD, THE PLANNING BOARD OF THE TOWNSHIP OF WEST MILFORD, AND JOHN DOES I THROUGH 5,

Defendants

ORDER GRANTING STATE DEFENDANTS' FEBRUARY 8, 2006 MOTION IN PART AND RESERVING DECISION ON DUE PROCESS AND EQUAL PROTECTION ISSUES

THIS MATTER having been opened to the Court on the application of Zulima V. Farber, Attorney General of New Jersey, attorney for New Jersey Department of Environmental Protection and the State of New Jersey (Barbara L. Conklin, D.A.G., appearing); And the Court having considered the brief, certification of counsel and exhibits in support of the motion, Plaintiff's brief in opposition to the motion and oral argument on March 31, 2006 by counsel for Plaintiff and State Defendants;

And with notice to the Township of West Milford and the West Milford Planning Board, neither of which filed written response to the motion;

It is on the 25th Day of April, 2006

1. ORDERED that State Defendants' motion to dismiss the portions of the complaint challenging N.J.A.C. 7:38-3.5, N.J.A.C. 7:38-6.4 and N.J.A.C. 7:38-6.8 for lack of jurisdiction pursuant to R. 2:2-3 (a) (2) is granted; and it is further

2. ORDERED that State Defendants' motion to dismiss the complaint against State Defendants without prejudice, pending resolution of I/M/O Castle Rock Estates, Docket No. 5564-04T1 is denied without prejudice; and it is further

3. ORDERED that State Defendants' motion to dismiss Plaintiff's claim that the Highlands Act, N.J.S.A. 13:20-1 et seq. and/or its implementing regulations, N.J.A.C. 7: 38, take Plaintiff's property without just compensation is hereby granted, on the

grounds of unripeness and failure to exhaust administrative remedies; and it is further

4. ORDERED that decision is reserved on State Defendants' motion to dismiss plaintiff's due process and equal protection claims arising from N.J.S.A. 13:20-28a(3) until April 28, 2006 or such time as the court hears oral argument on Plaintiff and State defendants' respective motions for judgment on Plaintiff's facial challenge to N.J.S.A. 13:20-16, N.J.S.A. 13:20-17, N.J.S.A. 13:20, N.J.S.A. 13:20-25, N.J.S.A. 13:20-26 and N.J.S.A. 13:20-35; and it is further

5. ORDERED that State Defendants' motion for a protective order pursuant to R. 4: 10-3 (b) relieving State Defendants from the obligation to respond to Plaintiff's interrogatories and requests for documents is hereby granted, and it is further

6. ORDERED that State Defendants' counsel shall serve a copy of this signed order upon all counsel within 7 days of its receipt from the Court

/S/
Anthony J. Graziano, J.S.C.

X Motion Opposed
X Oral Argument Heard on March 31, 2006
X Oral Conclusions of Law Placed on the Record March 31, 2006

Filed: April 25, 2006
Anthony J. Graziano, Judge Superior Court

WEINER LESNIAK LLP
629 Parsippany Road
Post Office Box 438
Parsippany, New Jersey 07054-0438
(973) 403-1100 Fax: (973) 403-0010
Attorneys for Defendant, WEST MILFORD PLANNING BOARD

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: PASSAIC COUNTY
DOCKET NO. PAS-L-32 I 8-05

CASTLE ROCK ESTATES, LLC,
Plaintiff(s)

vs.

THE STATE OF NEW JERSEY, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, THE TOWNSHIP OF WEST MILFORD, THE GOVERNING BODY OF THE TOWNSHIP OF WEST MILFORD, THE PLANING BOARD OF THE TOWNSHIP OF WEST MILFORD and JOHN DOES I THROUGH V. PERSONS AN/OR ENTITIES YET TO BE IDENTIFIED,

Defendant(s)

ORDER

THIS MATTER having been brought before the Court pursuant to, R.4:37-2(a); R.4:10-2; R.1:9-2 and R.4:10-3 on joint application of Defendant, West Milford Planning Board (Bryant Gonzalez, Esq., appearing), Defendant, Township of West Milford (also named as the Governing Body to the Township of West Milford) (Fred Semrau, Esq., appearing) and William H. Drew, a non-party, (Fred Semrau, Esq., appearing) for an Order: (I) Dismissing the Plaintiff's Complaint as against the defendants, West Milford Planning Board and Township of West Milford (also named as the Governing Body to the Township of West Milford); (2) Quashing the Plaintiff's Notice to Produce and Interrogatories served as against the defendants, West Milford Planning Board and Township of West Milford (also named as the Governing Body to the Township of West Milford); (3) Quashing the Plaintiff's subpoena ad testifcandum served on William H. Drew, a non-party to this action; and (4) for the entry of a Protective Order directing Plaintiff to cease and desist discovery activities as against the defendants, West Milford Planning Board and Township of West Milford (also named as the Governing Body to the Township of West Milford), as well as William H. Drew, a non-party to this action, and the Court having considered this matter and all arguments and briefs of counsel for the parties and for good cause appearing,

IT IS on this 10 day of May, 2006;

ORDERED that the Notice of Motion to Dismiss Plaintiff's Complaint as against the Defendant, West Milford Planning Board, for failure to timely file a Notice of Claim pursuant to N.J.S.A. 59: 1-1 et seq., is hereby granted with prejudice; and it is further

ORDERED that the Notice of Motion to Dismiss Plaintiff's Complaint as against the Defendant, Township of West Milford (also named as the Governing Body to the Township of West Milford), for failure to timely file a Notice of Claim pursuant to N.J.S.A. 59: 1-1 et seq., is hereby granted with prejudice; and it is further

ORDERED that within 10 days of this Order being received by the moving party, a true copy of this Order shall be served upon all counsel.

S/_____
Ronald b. Sokalski, J.S.C.

Papers considered:

____ No opposition

_X_ Opposition

Reasons are set forth
On the record of 5/10/06

Filed: May 10, 2006
Ronald B. Sokalski, J.S.C.

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY
R. J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625
Attorney for State Defendants
By, Barbara L. Conklin, D.A.G.
(609) 633-8109

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - PASSAIC COUNTY
DOCKET NO. PAS-L-003218-05

CASTLE ROCK ESTATES, LLC,
Plaintiff,
v.
THE STATE OF NEW JERSEY, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE: OF NEW JERSEY, THE TOWNSHIP OF WEST MILFORD, THE GOVERNING BODY OF THE TOWNSHI P OF WEST MI LFORD, THE PLAING BOARD OF: THE TOWNSHIP OF WEST MILFORD, AND JOHN DOES I THROUGH 5,

Defendants.

ORDER GRANTING STATE DEFENDANTS' FEBRUARY 8, 2006 MOTION TO DISMISS PLAINTIFF'S DUE PROCESS AN EQUAL PROTECTION CHALLENGE TO N.J.S.A. 13:20-28a(3)

THIS MATTER having been opened to the Court on the application of Zulima V. Farber, Attorney General of New Jersey, attorney for New Jersey Department of Environmental Protection and the State of N'ew Jersey (Barbara L. Conklin, D.A.G., appearing) with notice to Plaintiff, represented by Elliot Louis Pell, Esq;

And the Court having heard oral argument on the motion by Plaintiff and State Defendants' counsel on March 31, 2006;

And the Court having issued an Order on April 25, 2006 granting State Defendants' motion in part and reserving decision on the portion of State Defendants' motion seeking an order dismissing Plaintiffs' constitutional challenges to N.J.S.A. 13:20-28a(3);

And the Court having considered State Defendants' February 8, 2006 brief, certification of counsel and exhibits in support of the motion; State Defendants' April 13, 2006 letter and exhibits in further support of the motion; Plaintiff's March 15, 2006 brief in opposition to the motion; and oral argument on March 31, 2006;

And the Court having provided plaintiff the opportunity to submit any additional objection by May 26, 2006;

And the Court having received none,

It is on the 31st Day of May, 2006

1. ORDERED that the portions of Plaintiff's complaint alleging that N.J.S.A. 13:20-28a (3) violate the federal and state constitutional guarantee of due process and equal protection of the law is hereby DISMISSED with prejudice; and it is further

2. ORDERED that State Defendants' counsel shall serve a copy of this signed order upon all counsel within 7 days of its receipt from the Court.

S/_____
Anthony Grazino, J.S.C..

X Motion Opposed
X Oral Argument Heard on March 31, 2006
X Oral Conclusions of Law Placed on the Record 2006

Filed: May 31, 2006
Anthony J. Graziano, Judge Superior Court

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
50 TICE BLVD.
WOODCLIFF LAKE, NJ 07677

June 14, 2006

John M. Chacko,Clerk
Superior Court of New Jersey
Appellate Division
25 West Market Street, R. J. Hughes Complex
Trenton, New Jersey 08625-006

Re: Castle Rock Estates, LLC v. State of New Jersey, et al.

Dear Sir:

I have at hand the letter dated June 13, 2006 from Deputy Attorney General Barbara L. Conklin in opposition to plaintiff Castle Rock Estates, LLC's Motion for Leave to Appeal. The State's argument - that the Court should deny the aforesaid Motion because plaintiff has an appeal as of right, in that "on May 31, 2006, the trial court granted the State's motion and dismissed the last remaining portion of plaintiff's complaint" (letter dated June 13, 2006, p.3) is absurd.

Reference to the Orders dated May 10, 2006 and May 31, 2006 demonstrates the point beyond peradventure. Specifically, the Order dated May 10, 2006 provides: That the plaintiff's facial challenges to the Highlands Act are hereby dismissed with

prejudice for the reasons set forth by the Court on the record of May 10, 2006.

Although the May 10, 2006 Order fails to specify the identity of the "facial challenges to the Highlands Act," it cannot be denied that that Order has no relation whatsoever to the as applied claims for relief. Nor does the Order dated May 31, 2006, which was issued after the submission of the present Motion for Leave to appeal. That Order provides in pertinent part:

1. ORDERED that the portions of Plaintiff's complaint alleging that N.J.S.A. 13:20-28a(3) violates the federal and state constitutional guarantee of due process and equal protection of the law is hereby DISMISSED with prejudice..." (Annexed hereto as Exhibit A is a copy of the Order dated May 31, 2006).

Thus, neither the Order dated May 10, 2006 nor the Order dated May 31, 2006 purport to adjudicate the as applied claims for relief - viz., First Claim for Relief through Twelfth Claim for Relief, as well as the Sixty-Second through Sixty-Four Claims for Relief (67a to 69a; 80a). Therefore, there are numerous factual and legal issues remaining in this case. Accordingly, this appeal is interlocutory, as a matter of law.

Very truly yours,

S/_____

Elliott Louis Pell

cc: Barbara L. Conklin, Esq.
Bryant Gonzalez, Esq.

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
25 MARKET STREET
PO BOX 093
TRENTON, NJ 08625-0093
Phone: 609-633-8109 Fax: 609-984-9315
E-mail: Barbara.Conklin@dol.lps.state.nj.us

June 16, 2006

John M. Chacko, Clerk
Appellate Division
Superior Court of New Jersey
25 Market Street, R.J. Hughes Complex
P.O. Box 006
Trenton, New Jersey 08625

Re: Castle Rock Estates, LLC v. State of New Jersey, Township of WestMilford, et als.
Docket No.: Not Yet Assigned
Lower Court Dkt No.: PAS-L-003218-05

Dear Sir:

Please accept this reply by Defendant, State of New Jersey Department of Environmental Protection ("DEP") to Plaintiff's June 14 letter alleging its motion for leave to appeal is properly filed because "numerous factual and legal issues remain...in this case." Specifically, plaintiff claims that the lower court never ruled upon all of its 78

numbered "Claims for Relief" (Aa67-Aa83) and that, therefore, the appeal is interlocutory in nature.

However, plaintiff overlooks the fact that none of the five Trial Court Orders entered in this case disposed of any specific "Claim for Relief." Instead, these Orders adjudicate every factual and legal allegation contained in Plaintiff's Amended "Statement of the Case" (Aa32-Aa67). It is this "Statement of the Case" that contains all the alleged facts and legal defects plaintiff attributed to specific sections of the Highlands Act, Highlands Act regulations and attributed to Township Defendants' action on its development application. Plaintiff's "unaddressed claims" are part of a larger, improperly-pled laundry list of 78 legal conclusions regarding the Highlands Act in its entirety, N.J.S.A. 13:20-1 et seq., and the Highlands regulations in their entirety, N.J.A.C. 7:38-1 et seq. These blanket condemnations of the Act and its regulations are untethered to any specific fact as required by R. 4:5-2 and cannot be adjudicated. [1] Because of this, the parties did not brief or argue "Claims for Relief" nor did the Trial Court adjudicate them. Instead, the parties and the Court focused on the allegations and claims in Plaintiff's "Statement of the Case."

---

[1] The "Claims For Relief" that plaintiff alleges are unaddressed challenge the Highlands Act regulations, N.J.A.C. 7:38-1 et seq. Such challenges are not adjudicated in Law Division, but belong in the Appellate Division of Superior Court, pursuant to R. 2:2-3(a)(2).

In its "Statement of the Case" Plaintiff challenged N.J.S.A. 13:20-16, N.J.S.A. 13:20-17, N.J.S.A. 13:20-20, N.J.S.A. 13:20-25, N.J.S.A. 13:20-26, N.J.S.A. 13:20-28a(3), and N.J.S.A. 13:20-35 on

specific grounds (Aa47-Aa55; Aa59-Aa67); claimed the Act and the regulations "took" its property without just compensation (Aa65-Aa66); challenged Highlands regulations N.J.A.C. 7:38-3.5, N.J.A.C. 7:38-6.4 and N.J.A.C. 7:38-6.8 on specific grounds (Aa55-Aa59); and challenged actions by the Township defendants in connection with disposition of plaintiff's development application (Aa32-Aa47).

The challenge to N.J.A.C. 7:38-3.5, N.J.A.C. 7:38-6.4 and N.J.A.C. 7:38-6.8 and plaintiff's takings claim were dismissed by Order dated April 25, 2005 (Conklin Cert., June 16, 2006, Ex 1, attached).

Plaintiff's challenges to N.J.S.A. 13:20-16, N.J.S.A. 13:20-17, N.J.S.A. 13:20-20, N.J.S.A. 13:20-25, N.J.S.A. 13:20-26 and N.J.S.A. 13:20-35 were dismissed by Order dated May 10, 2006 (Aa8-Aa9).

Plaintiff's challenge to N.J.S.A. 13:20-28a(3) was dismissed by Order dated May 31, 2006 (Conklin Cert., June 13, 2006, Ex A).

And, finally, Plaintiff's challenge to the Township defendants' actions was dismissed by Order dated May 10, 2006. (Aa5-Aa7).

Since these Orders dispose of all the allegations and claims in the Amended Complaint, the Motion For Leave to Appeal is inappropriate and should be dismissed.

Lest the Court have any compunction about dismissing this motion, the record demonstrates that the broad-based "Claims for Relief" allegedly "unadjudicated" were, in fact, raised in the "Statement of the Case" concerning specific sections of the Highlands Act, and were dismissed by the Trial Court.

Plaintiff's First Claim for relief alleges the Act is an abuse of discretion (Aa67). That allegation appears in "Statement of the Case" Aa48/¶130; Aa50/¶141,¶145; Aa52/¶155; Aa54/¶168; Aa55/¶176,¶178; Aa59/¶194, ¶196; Aa60/¶204; Aa63/¶215. Plaintiff's facial challenge to N.J.S.A. 13:20-16, N.J.S.A. 13:20-17, N.J.S.A. 13:20-20, N.J.S.A. 13:20-25, N.J.S.A. 13:20-26 and N.J.S.A. 13:20-35 were dismissed by Order dated May 10, 2006 (Aa8-Aa9). Plaintiff's challenge to N.J.S.A. 13:20-28a(3) was dismissed by Order dated May 31, 2006 (Conklin Cert., June 13, 2006, Ex A).

The Second Claim for relief alleges the Act is not rationally related to desired ends (Aa67); that allegation appears in "Statement of the Case" Aa49/¶132; Aa50/¶144; Aa52/¶156; Aa56/¶181, ¶185; Aa59/¶193. Plaintiff's facial challenge to N.J.S.A. 13:20-16, N.J.S.A. 13:20-17, N.J.S.A. 13:20-20, N.J.S.A. 13:20-25, N.J.S.A. 13:20-26 and N.J.S.A. 13:20-35 were dismissed by Order dated

May 10, 2006 (Aa8-Aa9). Plaintiff's challenge to N.J.S.A. 13:20-28a(3) was dismissed by Order dated May 31, 2006 (Conklin Cert., June 13, 2006, Ex A).

The Third Claim for relief alleges that Act is arbitrary, unfair and unreasonable (Aa67); that allegation appears in "Statement of the Case" Aa49/¶133; Aa50/¶143,¶148; Aa52/¶157; Aa53/¶165; Aa54/¶169; Aa55/¶174; Aa55/¶179; Aa56/¶183; Aa58/¶191; Aa59/ ¶198; Aa61/¶205; and Aa63/¶216. Plaintiff's facial challenge to N.J.S.A. 13:20-16, N.J.S.A. 13:20-17, N.J.S.A. 13:20-20, N.J.S.A. 13:20-25, N.J.S.A. 13:20-26 and N.J.S.A. 13:20-35 were dismissed by Order dated May 10, 2006 (Aa8-Aa9). Plaintiff's challenge to N.J.S.A. 13:20-28a(3) was dismissed by Order dated May 31, 2006 (Conklin Cert., June 13, 2006, Ex A).

The Fourth Claim for relief alleges the Act is not rationally related to a Legitimate state interest (Aa68); that allegation appears in "Statement of the Case"Aa49/¶131;Aa50/¶142; Aa52/¶154; Aa54/¶170; Aa55/¶175,¶180;Aa56/¶184; Aa59/¶192; Aa61/¶206; and Aa63/¶217. Plaintiff's facial challenge to N.J.S.A. 13:20-16, N.J.S.A. 13:20-17, N.J.S.A. 13:20-20, N.J.S.A. 13:20-25, N.J.S.A. 13:20-26 and N.J.S.A. 13:20-35 were dismissed by Order dated May 10, 2006 (Aa8-Aa9). Plaintiff's challenge to N.J.S.A. 13:20-28a(3) was dismissed by Order dated May 31, 2006 (Conklin Cert., June 13, 2006, Ex A).

The Fifth Claim for relief alleges the Act deprives plaintiff of property without due process of law in violation of the federal constitution (Aa68); that

allegation appears in "Statement of the Case" Aa65-Aa66/¶235-¶243. Plaintiff's takings claims were dismissed on grounds of unripeness by Order dated April 25, 2006. (Conklin Cert., June 16, 2006, Exhibit 1). Plaintiff's federal due process challenge to N.J.S.A. 13:20-28a(3) was dismissed by Order dated May 31, 2006. (Conklin Cert., June 13, 2006, Ex. A).

The Sixth Claim for relief alleges the Act deprives plaintiff of property without due process of law in violation of the New Jersey constitution (Aa68); that allegation appears in "Statement of the Case" Aa65-Aa66/¶235-¶243. Plaintiff's takings claims were dismissed on grounds of unripeness by Order dated April 25, 2006. (Conklin Cert., June 16, 2006, Exhibit 1.) Plaintiff's state due process challenge to N.J.S.A. 13:20-28a(3) was dismissed by Order dated May 31, 2006. (Conklin Cert., June 13, 2006, Ex. A).

The Seventh Claim for relief alleges the Act deprives plaintiff of property in violation of the federal constitutional guarantee of equal protection of the law (Aa68); that same allegation appears in "Statement of the Case" Aa65-Aa66/¶235-¶243. Plaintiff's takings claims were dismissed on grounds of unripeness by Order dated April 25, 2006. (Conklin Cert., June 16, 2006, Exhibit 1.) Plaintiff's federal equal protection challenge to N.J.S.A. 13:20-28a(3) was dismissed by Order dated May 31, 2006. (Conklin Cert., June 13, 2006, Ex. A).

The Eighth Claim for relief alleges the Act deprives plaintiff of property in violation of New Jersey's constitutional guarantee of equal protection of the law (Aa68); that same allegation appears in "Statement of the Case" Aa65-Aa66/¶235-¶243.

Plaintiff's takings claims were dismissed on grounds of unripeness by Order dated April 25, 2006. (Conklin Cert., June 16, 2006, Exhibit 1.) Plaintiff's challenge to N.J.S.A. 13:20-28a(3) under the New Jersey guarantee of equal protection was dismissed by Order dated May 31, 2006. (Conklin Cert., June 13, 2006, Ex. A).

The Ninth Claim for relief alleges the Act "takes" plaintiff's property without just compensation in violation of the federal constitution (Aa68); that same allegation appears in "Statement of the Case" Aa65-Aa66/¶235-¶243. Plaintiff's takings claims were dismissed on grounds of unripeness by Order dated April 25, 2006. (Conklin Cert., June 16, 2006, Exhibit 1.)

The Tenth Claim for relief alleges the Act "takes" plaintiff's property without just compensation in violation of the New Jersey constitution (Aa69); that same allegation appears in "Statement of the Case" Aa65-Aa66/¶235-¶243. Again, plaintiff's takings claims were dismissed on grounds of unripeness by Order dated April 25, 2006. (Conklin Cert., June 16, 2006, Exhibit 1.)

The Eleventh Claim for relief alleges the Act is an unlawful ex post facto law in violation of federal law (Aa69); that same allegation appears in "Statement of the Case" Aa50/¶¶138-141. Plaintiff's challenge to N.J.S.A. 13:20-28a(3) on grounds of unlawful retroactivity was dismissed on May 31, 2006. Conklin Cert., June 13, 2006, Exhibit A.

The Twelfth Claim alleges the Act is an unlawful ex post facto law in violation of New Jersey law (Aa69); that same allegation appears in "Statement of the Case" Aa50/¶¶138-141. Again, plaintiff's challenge to N.J.S.A. 13:20-28a(3) on grounds of unlawful retroactivity was dismissed on May 31, 2006. Conklin Cert., June 13, 2006, Exhibit A.

The Sixty-Second Claim for relief alleges enforcement of the Act by John Doe I through V constitute a violation of 42 U.S.C. §1983 (Aa80). Since all the constitutional claims raised in plaintiff's "Statement of the Case" have been dismissed, there remains no federal civil rights claim to adjudicate.

The Sixty-Third Claim for relief alleges enforcement of the Act by John Doe I through V violate Plaintiff's State Constitutional rights (Aa80). Since plaintiff has not applied for a permit from NJDEP (Aa161-Aa162) and all plaintiff's facial and as applied challenges to the Act in the "Statement of the Case" have been dismissed, there is no "enforcement" of the Act to adjudicate.

The Sixty-Fourth Claim for relief alleges in applying the Act to the property, plaintiffs have failed to "turn square corners" with plaintiff (Aa80). The claim has been adjudicated since all plaintiff's claims in the "Statement of the Case" have been dismissed.

The foregoing record shows there is no truth to plaintiff's assertion that there are claims between the parties that remain for adjudication and that the motion for leave to appeal is appropriately before the court.

Alternatively, even if the Court determines that some "Claims For Relief" remain to be adjudicated, the motion should be denied. Plaintiff offers no factual or legal justification for this Court to accept this interlocutory appeal and interrupt the trial court proceedings to review disposition of a facial challenge to sections of the Highlands Act. The interest of justice neither requires it, nor will any irreparable harm come to plaintiff if the matter is returned to the trial court for disposition of the remainder of Plaintiff's claims.

Sincerely yours,

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY

By:_____
Barbara L. Conklin
Deputy Attorney General

c: Elliot Louis Pell, Esq.
Bryant Gonzalez, Esq.
Fred Semrau, Esq.

RECEIVED APPELLATE DIVISION:
JUNE 16, 2006
SUPERIOR COURT OF NEW JERSEY

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. AM-000639-05T1
MOTION NO. M -005561-05
BEFORE PART: O
JUDGE (S): PARKER .SAPP - PETERSON

CASTLE ROCK ESTATES LLC

vs

STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ET AL

MOTION FILED: May 30, 2006
ANSWER(S) FILED: June 13, 2006
By: CASTLE ROCK ESTATES
By: DEP
By: WEST MILFORD PLANNING BOARD
By: TWP. WEST MILFORD
SUBMITTED TO COURT: JULY 19, 2006

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 21st DAY OF JULY, 2006, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT:
FOR LEAVE TO APPEAL

GRANTED ( ) DENIED (xx) OTHER ( )

FOR THE COURT:

/S/_____
LORRAINE C. PARKER J.A.D.

I hereby certify that the forgoing is a true copy of the original on file in my office.

/S/_____
John M. Chacko
CLERK OF THE APPELLATE DIVISION

FILED: APPELLATE DIVISION JULY 31, 2006
JOHN M. CHACKO, CLERK